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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 BRIAN TERWILLEGER,

11 Plaintiff,

12 v.

13 GRAYS HARBOR COUNTY,

14 Defendant.

CASE NO. 3:19-cv-05218-RBL-JRC

ORDER DENYING MOTION TO
APPOINT COUNSEL AND TO
PROCEED *IN FORMA PAUPERIS*

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16 This 42 U.S.C. § 1983 civil rights matter has been referred to the undersigned Magistrate
17 Judge pursuant to 28 U.S.C. §§ 636 (b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1,
18 MJR 3, and MJR 4. Before the Court are plaintiff's motions to appoint counsel and for leave to
19 proceed *in forma pauperis*. Dkts. 12, 13.

20 Plaintiff has five cases pending before this Court, including four cases against Grays
21 Harbor County that include claims under 42 U.S.C. § 1983. *See* 3:19-cv-05215-RBL-JRC, 3:19-
22 cv-05216-RBL-JRC, 3:19-cv-5218-RBL-JRC, 3:19-cv-05219-RBL-JRC; *see also Terwillegger v.*
23 *DSHS*, 3:19-cv-05085-RBL-JRC. In this matter, plaintiff alleges that when he was in custody in
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1 Grays Harbor County Jail, scalding hot shower water burned him, which he claims violated the
2 Eighth and Fourteenth Amendments and Article I, section 14 of the Washington Constitution and
3 also constituted negligence. *See* Dkt. 1-1, at 3.

4 Grays Harbor County has moved to consolidate all four cases brought against it under
5 one cause number. *See* Dkt. 14. In all four cases against Grays Harbor County, plaintiff has
6 filed identical requests to have counsel appointed and to proceed *in forma pauperis*. *See* Dkts.
7 11, 12, 3:19-cv-05215-RBL-JRC; Dkts. 11, 12, 3:19-cv-05216-RBL-JRC, Dkts. 12, 13, 3:19-cv-
8 5218-RBL-JRC; Dkts. 9, 10, 3:19-cv-05219-RBI-JRC. In two of these cases, plaintiff has also
9 requested to amend his complaint to remove his federal claims and to have the matter remanded
10 to state court. *See* Dkt. 10, 3:19-cv-05215; Dkt. 8, 3:19-cv-05218.

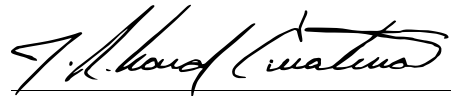
11 Because defendant was required to pay the filing fee when it removed this matter,
12 plaintiff's request to proceed *in forma pauperis* is, at this time, moot. *See* LCR 3(b); *see also*
13 Dkt. 1. Plaintiff's request is denied without prejudice.

14 Regarding plaintiff's request for the appointment of counsel in this matter, although there
15 is no constitutional right to appointed counsel in a § 1983 civil action, this Court may "request an
16 attorney to represent any person unable to afford counsel." *See Storseth v. Spellman*, 654 F.2d
17 1349, 1353 (9th Cir. 1995); 28 U.S.C. § 1915(e)(1). This Court will exercise its discretion to
18 appoint counsel only in exceptional circumstances. *Agyeman v. Corrections Corp. of Am.*, 390
19 F.3d 1101, 1103 (9th Cir. 2004). "A finding of . . . exceptional circumstances . . . requires at
20 least an evaluation of the likelihood of the plaintiff's success on the merits and an evaluation of
21 the plaintiff's ability to articulate his claims 'in light of the complexity of the legal issues
22 involved.'" *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).
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1 Plaintiff's complaint shows that he is able to adequately articulate his claims in light of
2 the complexity of the legal issues involved. *See* Dkt. 1-1. His claims are not overly or unusually
3 complex. Plaintiff has also demonstrated that he can adequately articulate other claims such as
4 his requests to amend his complaint to remove his federal claims so that the matter may be
5 remanded to state court. *See* Dkt. 8. Moreover, at this early stage, the Court is unable to find
6 that plaintiff is likely to succeed on the merits of his claims. Thus the Court concludes that at
7 this point, appointment of counsel is not justified.

8 Therefore, plaintiff's motion for appointment of counsel (Dkt. 13) and motion to
9 proceed *in forma pauperis* (Dkt. 12) are **DENIED WITHOUT PREJUDICE**. In view of the
10 pending consolidation and remand motions, the Court will not consider further motions filed in
11 this matter until it has received the parties' responses regarding consolidation and remand and
12 those issues have been decided.

13 Dated this 23rd day of April, 2019.

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15 J. Richard Creatura
16 United States Magistrate Judge
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